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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

NOV 12 1992

Congoleum Corporation  
William J. Canavan, CEO-CHB  
211 University Office Plaza II  
3705 Quaker Ridge Road  
Mercerville, NJ 08619

Re: **Strasburg Landfill Site: Notice of Potential Liability**  
**("General Notice")/"Special Notice" for Negotiations for Remedial Design & Remedial Action For Operable Unit No. 3/Demand for Payment of Costs**

Dear Mr. Canavan:

This letter notifies you that Congoleum Corporation may incur, and/or may have incurred, liability under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ["CERCLA"], 42 U.S.C. § 9607, with respect to the Strasburg Landfill Site, Newlin Township, Chester County, Pennsylvania ["Site"]. This letter additionally notifies you of the means by which Congoleum Corporation may resolve its liability with respect to certain response actions selected for the Site.

**INTRODUCTION**

*The Superfund Law*

CERCLA, more commonly known as Superfund, was originally enacted in 1980. CERCLA has several key objectives, including setting priorities for cleanup of the worst hazardous sites in the country and identifying the parties potentially responsible for investigating, cleaning up, and/or paying the costs of cleaning up such hazardous sites. These parties are referred to as "potentially responsible parties" or "PRPs."

PRPs under CERCLA include: 1) current owners and operators of the site; 2) owners and operators of the site at the time hazardous substances were disposed; 3) persons who arranged for disposal or treatment of hazardous substances sent to the site; and 4) persons who accepted hazardous substances for transport to the site, and who selected the site for disposal. These categories are set forth in Section 107 of CERCLA, 42 U.S.C. § 9607.

Under CERCLA, the Environmental Protection Agency ["EPA" or "Agency"] may order PRPs to perform response actions deemed necessary by EPA to protect the public health, welfare, or the environment. Additionally, PRPs may be liable for all costs incurred by the government in responding to any release or threatened release of hazardous substances, pollutants or contaminants at the Site pursuant to Sections 104 and 107(a) of CERCLA, 42 U.S.C. §§ 9604 and 9607(a); the Resource Conservation and Recovery Act ["RCRA"], as amended, 42 U.S.C. §§ 6901 et seq.; and other laws. Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study ["RI/FS"], conducting a Remedial Design/Remedial Action ["RD/RA"], and other investigation, planning, response, oversight, and enforcement activities related to the Site. In addition, PRPs may be required to pay for damages for injury to, destruction of, or loss of natural resources, including the cost of assessing the amount or extent of such injury related to a site.

*Response Actions Undertaken*

EPA has conducted and overseen response activities pursuant to CERCLA in connection with the Site. These response actions include, but are not limited to, the following:

- On March 31, 1989, EPA placed the Site on the National Priorities List ["NPL"], a list of the most serious uncontrolled or abandoned sites at which releases of hazardous substances have occurred or may occur.
- EPA has selected two previous remedial actions in connection with operable units 1 and 2 at the Site. Operable unit 1 involved treating and discharging leachate emanating from the Site. Operable unit 2 involves the construction of a security fence around the perimeter of the landfill.
- On December 24, 1991, an RI/FS for Operable Unit 3 was completed in which the nature and extent of contamination at the Site was studied and remedial alternatives developed for evaluation.
- On March 31, 1992, EPA selected remedial action for implementation of Operable Unit 3 at the Site from among the alternatives presented in the RI/FS.

EPA may expend additional funds for response activities at the Site under the authority of CERCLA and other laws.

***Purpose of This Letter***

EPA is now contacting you in an attempt to resolve Congoleum Corporation's liability with respect to certain response actions at the Site. Toward that end, this letter contains:

1. A formal notification of Congoleum Corporation's potential liability with respect to the Site;
2. A formal demand for reimbursement of costs that have been paid (including interest thereon) and that are to be paid (which are subject to interest) in conducting and/or overseeing response actions at the Site (Demand for Payment);
3. Notification that a limited period of formal negotiations for an agreement under which Congoleum Corporation will implement the requirements of the ROD begins with your receipt of this letter (Special Notice);
4. General and site-specific information to assist you in these negotiations; and
5. A proposed consent decree, and proposed administrative consent order, as described below.

**NOTIFICATION OF POTENTIAL LIABILITY**

EPA has evaluated information in connection with its investigation of the Site. Based on this information, EPA believes that Congoleum Corporation may be a PRP for this Site (see Introduction, above, for a discussion of PRPs). Specifically, based on State and Federal records and/or other information, EPA has information indicating that your company arranged for disposal or treatment of hazardous substances sent to the Site.

As a PRP, Congoleum Corporation may be asked or required to perform response actions and/or reimburse the government for response actions conducted using federal funds (see Introduction, above, for details explaining EPA's options under CERCLA). EPA encourages Congoleum Corporation to perform or to finance voluntarily those response activities that EPA determines to be necessary at the Site.

**DEMAND FOR PAYMENT**

As of January 6, 1992, EPA has paid costs in excess of \$2,145,173.81 for response activities related to the Site.

Although this figure may not include all applicable costs incurred and paid to date, the figure represents EPA's most recent calculation. Furthermore, additional costs, including oversight and related enforcement costs may continue to be incurred.

By this letter, EPA demands that Congoleum Corporation reimburse the Agency for past costs of at least \$2,145,173.81. Failure to pay, or delay in payment, may subject Congoleum Corporation to liability for increased costs associated with these past costs including, but not limited to, interest and enforcement costs. Interest on amounts recoverable begins to accrue as of the date of receipt of this letter as provided by Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

You may contact the following person to arrange for payment of the above-described costs:

Mary E. Rugala  
Assistant Regional Counsel (3RC22)  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107  
(215) 597-6957

#### **SPECIAL NOTICE NEGOTIATIONS MORATORIUM**

EPA has determined that use of the "special notice" procedures specified in Section 122 of CERCLA, 42 U.S.C. § 9622, will facilitate a settlement between EPA and Congoleum Corporation for implementation of this remedial action at the Site. Therefore, pursuant to that Section, your receipt of this letter triggers a sixty (60) day moratorium on certain EPA response activities at the Site. During this sixty (60) day period, Congoleum Corporation is invited to submit a good faith proposal (defined below) to conduct and/or finance such remedial action and negotiate a consent decree (described below) under which Congoleum Corporation will perform such work. If EPA determines that such a good faith offer has been timely received, the Agency will provide an additional sixty (60) days to finalize the consent decree. When approved by EPA and the United States Department of Justice, the consent decree will then be filed in federal court.

EPA encourages Congoleum Corporation's participation by submitting a good faith proposal as defined below.

#### ***Good Faith Proposal***

A good faith proposal to conduct or finance the remedial action is a written proposal that demonstrates Congoleum

Corporation's qualifications and willingness to perform such work and includes the following elements:

1. A statement of willingness and financial ability by Congoleum Corporation to implement the requirements of the ROD and proposed consent decree;
2. A demonstration of Congoleum Corporation's technical capability to conduct the work, including the identification of the firm(s) Congoleum Corporation intends to retain to conduct all or portions of such work or a description of the process you will use to select the firm(s);
3. A statement of Congoleum Corporation's willingness and ability to reimburse EPA for costs incurred in overseeing the performance of the work as well as EPA's past costs (as described above);
4. Comments, if any, on the proposed consent decree and on the proposed administrative order (see below);
5. The name, address, telephone, and telefax number (if any) of the person(s) who will represent Congoleum Corporation in negotiations for a consent decree.

*Consent Decree*

Section 122(d)(1)(A) of CERCLA, 42 U.S.C. § 9622(d)(1)(A), requires that settlements for remedial action be entered in the appropriate federal district court in the form of a consent decree. Enclosed with this letter you will find a site-specific draft of EPA's model consent decree. This model provides boilerplate language for most provisions in order to standardize CERCLA consent decrees as much as possible and expedite CERCLA settlements. The United States will commence negotiations with a document containing language which, for the most part, is the same language the Government will expect in a final settlement because it reflects legal and procedural terms that have been found acceptable to both EPA and the regulated community in a large number of situations. Your decision to submit a good faith proposal to perform the work should be made with the understanding that the terms appearing in the draft consent decree are substantially the terms which EPA expects to appear in the final settlement.

Also enclosed find a proposed administrative consent order ("Order") which provides that Congoleum Corporation will commence remedial design activities upon the effective date of the Order. The Order need not be entered in Federal court and will enable Congoleum Corporation to commence design activities prior to entry of the remedial action consent decree. The Order will

remain in effect until the consent decree is entered. EPA encourages Congoleum Corporation to enter into such an Order.

*PRP Steering Committee*

EPA encourages good-faith negotiations between Congoleum Corporation and EPA and between Congoleum Corporation and other potentially responsible parties ["PRPs"]. To facilitate these negotiations, EPA has enclosed a list of other PRPs to whom this notification has been sent. Inclusion on, or exclusion from, this list does not constitute a final determination by EPA concerning the liability of any party with respect to the Site.

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is very important for successful negotiations with EPA.

*PRP Response/EPA Contact Person*

Congoleum Corporation is encouraged to contact EPA as soon as possible to state its willingness to participate in negotiations relating to the Site. Specifically, Congoleum Corporation has sixty (60) calendar days from receipt of this letter to provide EPA with a written proposal as described above. You may respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that Congoleum Corporation does not wish to negotiate a resolution of its liabilities in this matter and that Congoleum Corporation has declined any involvement in performing the response activities described above. In such event, EPA may, among other things, issue an administrative order directing Congoleum Corporation to perform the response action; seek to file an action in federal court to obtain a court order directing Congoleum Corporation to perform the response action; and/or perform such response action and seek reimbursement from liable parties.

If a proposal is submitted which EPA determines is not a good faith offer, you will be notified in writing of EPA's decision to end the negotiations moratorium and the reasons therefor. Congoleum Corporation may be liable for performing the response action pursuant to a unilateral administrative order or court order and/or reimbursing EPA for the cost of response actions performed by EPA.

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Your response to this letter, including written proposals to perform the remedial action selected for the Site, should be sent to:

James P. Harper (3HW22)  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107  
(215) 597-6906

**Notice of Admitted Misconduct of Former EPA Employee**

The EPA wishes to advise you of admitted misconduct by a former EPA employee who participated in certain activities at the Strasburg Landfill Site. On June 17, 1992, Mr. Robert Caron, who served as an On-Scene Coordinator (OSC), pled guilty in Federal District Court in Baltimore, in a case which did not involve the Strasburg Landfill, to one count of making false declarations under oath in violation of 18 U.S.C. § 1623. The plea agreement entered in court in connection with this guilty plea is enclosed. The plea agreement details additional instances in which he made false declarations regarding his credentials. Mr. Caron has resigned from and is no longer employed at EPA.

Mr. Caron's involvement at the Strasburg Landfill Site may be summarized as follows. Mr. Caron, as Deputy On-Scene Coordinator for the Site, prepared two pollution reports of removal activity for the Site, dated February 24, 1984 and March 6, 1984, respectively. In addition, an "Acknowledgement of Completion For TDD, TAT Emergency Response, Removal and Prevention," dated August 24, 1984, refers to a briefing meeting with OSC Caron and the fact that Mr. Caron had tasked the TAT (Technical Assistance Team) to prepare for a preliminary assessment at the Site.

EPA believes that Mr. Caron's involvement in the response actions performed at the Site was insignificant. Moreover, EPA believes that all response actions performed were consistent with the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300 ("NCP").

If you wish further information regarding this matter, please contact Mary E. Rugala, Assistant Regional Counsel, at (215) 597-6957.

**ADMINISTRATIVE RECORD**

Pursuant to Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA has established an administrative record which contains documents forming the basis of EPA's selection of response action for the Site. The administrative record file is available to the public for inspection and comment. You may wish to review the

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administrative record to assist you in responding to this letter, but your review should not delay such response. Copies of the file are located both at the EPA Region III office and:

Bayard Taylor Memorial Library  
216 East State Street  
Kennett Square, PA 19348  
(215) 444 - 2702

EPA will consider comments received, if any, after the close of the comment period in accordance with 40 C.F.R. § 300.825.

Note that this letter may pertain to one of several operable units requiring response at the Site. Unless otherwise specified herein, this letter does not apply to any other operable unit at the Site or any other site.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If you or your attorney have any questions pertaining to this matter, please direct them to Mary Rugala, Office of Regional Counsel, at (215) 597-6957.

Sincerely,

  
Abraham Ferdas, Associate Division  
Director for Superfund Programs

cc: Bruce McClain, (PADER)  
Daniel G. Shillito (DOI)  
Shelly L. Hall (DOI)  
Kirsten Erickson (NOAA)  
Mary Rugala (ORC)  
Robert J. Rucker, Manager  
Andrew Foster, Esq.

Enclosure: Draft Consent Decree  
Draft Administrative Order on Consent  
for Remedial Design  
Robert Caron Plea Agreement  
List of Potentially Responsible Parties